

Agreement Number UTB 1469

**WSDOT-CENTURYLINK AGREEMENT: UTILITY RELOCATION COSTS AND
DISPUTE RESOLUTION**

This Agreement Regarding Utility Relocation Costs and Resolution of Dispute (“Agreement”) is entered into by and between the Washington State Department of Transportation (“WSDOT”) and Qwest Corporation d/b/a CenturyLink (“CenturyLink”), each a “Party” or collectively the “Parties.”

RECITALS

- A. WSDOT is a state agency authorized to plan, design, construct, operate and maintain highways in the State of Washington;
- B. CenturyLink is a local exchange carrier authorized to provide telecommunications and related services in the State of Washington;
- C. CenturyLink owns and operates utility facilities, located within public rights-of-way of WSDOT and other public entities (*e.g.*, cities and towns), as well as on fee properties, that are, or may become, in conflict with WSDOT highway projects (“Facilities”);
- D. In instances where a WSDOT highway project (“Project”) conflicts with any Facilities, WSDOT may not expend motor vehicle funds for any relocation, modification or removal (hereinafter collectively “Relocation”) of the Facilities in conflict with the Project, unless those Facilities occupy the public right-of-way or fee property pursuant to a compensable property interest;
- E. The parties disagree as to what entails a compensable property interest and the extent to which either Party is obligated to expend funds where relocation is required by a Project in public rights of way not controlled by WSDOT;
- F. Separately, CenturyLink asserts certain rights as successor in interest to Pacific Telephone and Telegraph Company pursuant to state law, including Article XII, § 19 of the Washington Constitution, which (“Preexisting Rights”) CenturyLink claims constitutes a compensable property interest, which would allow for recovering Relocation costs from WSDOT;
- G. A dispute exists between the Parties regarding these issues, including the Preexisting Rights, as to the extent to which CenturyLink is required by law to incur the expense of Relocation as well as applicable requirements asserted by WSDOT surrounding its Facilities affected by WSDOT operations and highway projects (each, a “Project”);
- H. In order to avoid delay to Projects because of this dispute, the Parties wish to enter into this Agreement that will allocate cost responsibility for Relocation of the Facilities. The known Projects where disputes may arise over the next several years include, but are not limited to:

- SR 520/Portage Bay Bridge & Roanoke Lid Project
 - Montlake to Lake Washington I/C and Bridge Replacement Project
 - SR 509 / Miller Creek Fish Passage
 - I-90 / Sunset, Lewis, West Village Park, Soderman & Schneider Fish Passage
 - SR 26/Dusty to Colfax – Add Climbing lanes
 - US 101/May Creek in Vic of Dowans Creek Rd - Remove Fish Barrier
 - SR 7 and SR 161/ Unnamed Tributaries to S Creek - Remove Fish Barriers
 - SR 305/Port Madison, Agatewood Rd, Adas Will Ln - Safety Improvements
 - US 101/Duckabush Estuary – Restoration
 - US 101/Jefferson/Clallam County Fish Barriers - Remove Fish Barriers
 - SR 16/SR 160/Kitsap County Fish Passage Barriers-Remove Fish Barriers
 - SR 8/US 12/Grays Harbor County Fish Passage Barriers-Remove Fish Barrier
 - US 101/Indian Creek - Remove Fish Barrier
 - US 101/Leland Creek and Unnamed Tribs - Remove Fish Barriers
 - US 101/May Creek in Vic of Dowans Creek Rd - Remove Fish Barrier
 - SR 7 and SR 161/ Unnamed Tributaries to S Creek - Remove Fish Barriers
 - SR 305/Port Madison, Agatewood Rd, Adas Will Ln - Safety Improvements
 - US 101/Duckabush Estuary – Restoration
 - US 101/Jefferson/Clallam County Fish Barriers - Remove Fish Barriers
 - SR 16/SR 160/Kitsap County Fish Passage Barriers-Remove Fish Barriers
 - SR 8/US 12/Grays Harbor County Fish Passage Barriers-Remove Fish Barrier
 - US 101/Indian Creek - Remove Fish Barrier
 - US 101/Leland Creek and Unnamed Tributaries - Remove Fish Barriers
- I. WSDOT’s ability to enter into this Agreement is conditioned upon the unique dispute regarding Preexisting Rights and each Party’s commitment to working diligently towards a permanent resolution. For this reason, this Agreement is applicable only to CenturyLink Facilities formerly owned by Qwest Corporation;
- J. The Parties enter into this Agreement with a mutual understanding that, notwithstanding the Parties’ execution and performance under this Agreement, each Party reserves all rights, claims, remedies, and defenses related to any payment made under this Agreement, including, without limitation, the right to seek reimbursement of any amounts paid by a Party in connection with this Agreement.

AGREEMENT

NOW THEREFORE, pursuant to WSDOT’s authority granted pursuant to RCW 47.01.260, and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. Incorporation of Recitals. The above-stated Recitals are incorporated into this Agreement and made a part hereof by this reference to the same extent as if such Recitals were set forth in full at this point.

2. Project Development and Coordination.

2.1 Coordination. During the design phase of any Project, WSDOT and CenturyLink will identify the extent of the conflicts between the Facilities and the Project. WSDOT will provide CenturyLink with Project design plans as early as possible, and will schedule and meet with CenturyLink to review, to the extent knowable by WSDOT during early Project phases, the right-of-way and environmental requirements, design, construction, cost estimates, and scheduling for CenturyLink's Relocation to ensure maximum lead time for advance order of materials and scheduling of work force. The Parties will thereafter work cooperatively to identify and plan for necessary Relocation of Facilities according to Project schedules, and the timing and process to establish any new Permits as required under Section 2.3.

2.2 Relocation Plan. The Parties will determine a mutually-agreeable plan for protection, adjustment, or relocation of the Facilities ("Relocation") as necessitated by the Project plans, including the Party performing the work and the approximate time required for same ("Relocation Plan"). The process and timing involved for developing individual Relocation Plans will vary depending upon the method of project delivery. In the case of design-build projects, WSDOT's design-builder may be required to coordinate with Century Link on behalf of WSDOT for the purpose of this section.

2.3 Permitting. For the purpose of reducing duplicative procedures where Relocation of Facilities is concerned, in instances where the Parties agree the public-right of way is under permanent WSDOT control and where Facilities are not already subject to a Permit, CenturyLink will not be required to apply for a Permit for existing Facilities where relocation is imminent as part of a Relocation Plan. CenturyLink will, however, apply for Permits authorizing occupancy of the to-be-relocated Facilities within a new or modified alignment within WSDOT right-of-way; this concession by CenturyLink does not concede the lack or existence thereof, limit or preempt any Preexisting Rights for these Facilities.

3. Relocation Costs.

3.1 Relocation at CenturyLink Cost. Relocation of Facilities from within WSDOT public rights-of-way identified in RCW 47.17, and from other public rights-of-way documented to be within WSDOT's permanent control pursuant to Title 47 RCW, shall be at CenturyLink's sole cost. Where the Relocation is to be performed by WSDOT or its contractor pursuant to this section 3.1, the Parties will use WSDOT Form 224-062 "Utility Construction Agreement Work by WSDOT – Utility Cost" to memorialize Relocation for each Project or portion of a Project pursuant to this section 3.1. Where CenturyLink will perform its own Relocation at its cost, the parties will coordinate scheduling of the Relocation without formal agreement, and according to the course described in section 2.1.

3.2 Relocation at WSDOT Cost. Relocation of Facilities not included in section 3.1, including Relocation of Facilities located in private property (whether pursuant to easement, lease, license or any other interest or right), and/or in public rights-of-way not under the permanent control of WSDOT, shall be at WSDOT's sole cost, except to the extent CenturyLink exercises a Betterment as set forth in section 3.4. Where the Relocation is to be performed by CenturyLink or its contract forces, the Parties will use WSDOT Form 224-053 "Utility Construction Agreement

Work by Utility – WSDOT Cost” to memorialize Relocation for each Project or portion of a Project pursuant to this section 3.2. Where the Relocation is to be performed by a contractor or design-builder for WSDOT, the Parties will enter into an agreement consistent with WSDOT Form 224-053.

3.3 Relocation Agreements. Relocation Plans and costs will be memorialized under individual relocation agreements (“Relocation Agreements”). WSDOT standard form agreements for utility relocation shall be used as Relocation Agreements, except that non-standard agreements will be negotiated when the scope of the relocation or cost apportionment does not align with any standard form agreement. WSDOT standard form Relocation Agreements for this purpose include:

- Work by State – Utility Cost (DOT Form 224-062 EF)
- Work by State – Shared Cost (DOT Form 224-071 EF)
- Work by Utility – State Cost (DOT Form 224-053 EF)
- Work by State – State Cost (DOT Form 224-077 EF)

The Parties agree that multiple Relocation Agreements set forth in this section 3 may be required for a given Project. Further, the acquisition and release of easements, if any, shall be set forth in separate agreements to be negotiated by the Parties. The Parties agree to work together in good faith to complete the documents necessary to effectuate the intent of this Agreement.

3.4 Betterment. Notwithstanding the foregoing, if CenturyLink desires to include a betterment in the utility work at any specific location, WSDOT will allow for betterment work to be performed, provided the Parties can reasonably coordinate the Project schedule to accommodate the betterment work without increasing Project costs or delaying the Project. Betterment is defined as set forth in the WSDOT Utilities Manual, Appendix A, Glossary. Specifically, a betterment is any upgrading of the facility being relocated that is not attributable to the highway construction or to meeting current requirements or standards and is made solely for the benefit of and at the election of CenturyLink. In instances where WSDOT has cost responsibility pursuant to Section 3.2 herein, the difference in cost between the minimum construction required as a result of the Project and CenturyLink’s desired betterment shall be at CenturyLink’s sole expense.

3.5 Federal Funding. Notwithstanding the foregoing, if federal funding is made available by WSDOT to any public utility on a Project, CenturyLink shall be entitled to commensurate reimbursement from such funds for the costs of its Relocation.

4. Reservation of Rights.

(a) The Parties acknowledge and agree that as of the execution of this Agreement, a dispute exists between the Parties regarding the Preexisting Rights as to the extent to which CenturyLink is required by law to incur the expense of Relocation of its Facilities affected by WSDOT Projects.

(b) The Parties further acknowledge and agree that as of the execution of this Agreement, a dispute exists as to the extent and form of consent required from WSDOT for CenturyLink to occupy and maintain its Facilities within public rights-of-way controlled by WSDOT. In light of the Parties’ dispute, the Parties acknowledge and agree that this Agreement

is the best mechanism under the circumstances to move forward with respect to Relocation of CenturyLink Facilities in conflict with current and future Projects for the Term of this Agreement. No Party concedes by virtue of this Agreement that another Party has a valid claim against it or that it does not have valid defenses. Therefore, neither this Agreement nor the agreements or use permits called for herein shall be considered as establishing any precedent with respect to the interpretation of any issue, right, title, privilege, or obligation of any kind, whether contractual, statutory, common law or otherwise, whether of the parties or anyone else; nor shall this Agreement or any of the agreements or use permits called for herein act as a waiver or modification of the Parties' respective rights, title, privilege, or obligation of any kind, whether contractual, statutory, common law or otherwise, all of which are expressly reserved. The Parties expressly reserve all their legal rights as to ultimate responsibility for the costs of Relocation of Facilities located in the public right of way, including but not limited to, the right to seek, consistent with Section 5 below, recovery of same and a judicial determination of any legal issue raised herein.

(c) The Parties further agree that the reservation of rights within this section shall not exceed a period of two (2) years for any amount paid under this Agreement.

5. Dispute Resolution, Governing Law and Venue

In order to expeditiously and permanently resolve the Preexisting Rights dispute, the Parties hereby agree as follows.

Within one year of the effective date of this Agreement, the Parties will initiate the following process to resolve the dispute described herein with respect to ultimate payment responsibilities for Relocation of Facilities necessitated by Projects.

WSDOT and Lumen shall each appoint a member to a disputes board; these two members shall select a third member not affiliated with either agency. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

In the event that either Party deems it necessary to institute legal action or proceedings following the decision of the disputes board, the Parties agree that any such action or proceedings shall be brought either in the superior court situated in Thurston County, Washington, or the United States District Court for the Western District of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs.

6. General Provisions

6.1 No Retroactive Effect. The terms and conditions of this Agreement are not intended and do not apply to any Relocations of Facilities that occurred prior to the Effective Date hereof.

6.2 Breach. If a Party is in material breach of or fails to perform the terms and provisions of this Agreement and such failure continues for a period for thirty (30) days after written notice from the other Party (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced within such thirty (30) day period and diligently pursued thereafter to completion), then such non-defaulting Party may, (a) terminate this agreement, and (b) pursue any remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief. Where the non-defaulting Party pursues an action for damages or otherwise, such party shall be entitled to reasonable attorneys' fees, court costs and associated expenses in any prevailing action, if awarded in such action.

6.3 Rights and Remedies. The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

6.4 No Waiver. Failure of a Party to enforce any term under this agreement shall not be deemed, nor shall it constitute, a waiver of such term or any other term, unless otherwise provided in a writing executed by the Party charged.

6.5 No Agency. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.

6.6 No Third Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

6.7 Binding on Successors; Survival. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives. This Agreement supersedes every antecedent or concurrent oral and/or written declaration or understanding respecting the Relocation Work and the Project.

6.8 Compliance with Laws. Each of the Parties shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed.

6.9 Designated Representatives and Notice.

(a) CenturyLink's Designated Representative for this Agreement is Laina Moris, Director Network Engineering (laina.moris@lumen.com).

(b) WSDOT's Designated Representative for this Agreement is Ahmer Nizam, Technical Services Manager (nizama@wsdot.wa.gov).

(c) Changes to Designated Representative shall be made by notice pursuant to 6.9(d).

- (d) Notice. Unless otherwise provided herein, all notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be (a) delivered personally, (b) sent by overnight commercial air courier (such as Federal Express), or (c) mailed, postage prepaid, certified or registered mail, return receipt requested; to the parties at the addresses hereinafter set forth:

CenturyLink

Attn: Network Infrastructure Services
1025 Eldorado Blvd
Broomfield, Co 80021

WSDOT

Greg Gachowsky, Manager – Utilities, Railroad & Agreements
gachowg@wsdot.wa.gov
(360) 705-7265
WSDOT Development Division
PO Box 47329
Olympia, WA 98504-7329

6.10 Term and Termination. The term of this Agreement begins on the Effective Date and ends five years from the date thereof unless terminated by either party for convenience by providing 90 calendar days' written notice of termination to the other party. Any such termination shall not affect the validity of any previously executed Relocation Agreements or the Parties' respective reservation of rights related thereto.

6.11 Interpretation. This Agreement is the result of negotiations between the Parties. Any ambiguity in this Agreement shall not be presumptively construed in favor of or against any party.

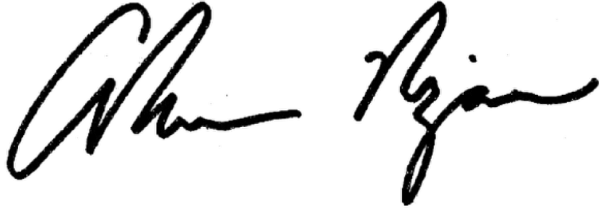
6.12 Authority. Each Party represents and warrants that it has the requisite authority to execute this Agreement.

6.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

6.14 Electronic Signature. Each Party agrees to utilize electronic signatures to conclude this agreement and intends such signatures to have the same force and effect as manual signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective, authorized representatives as of the Party's date signed last below.

For Washington State Department of Transportation

A handwritten signature in black ink, appearing to read "Alan R. [unclear]", written in a cursive style.

For CenturyLink

Danett Kennedy
Danett Kennedy (May 19, 2021 16:31 MDT)